



No. 83-1204

IN THE
Supreme Court of the United States

October Term, 1983

SUSAN LEE CULTEE, et al.
Petitioners,

v.

UNITED STATES OF AMERICA, et al.
Respondents.

ON PETITION FOR
WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REPLY BRIEF OF PETITIONING CHILDREN

ZIONTZ, PIRTLE, MORISSET,
ERNSTOFF & CHESTNUT
Samuel J. Stiltner
Mason D. Morisset
Attorneys for Petitioners

Post office address:
1100 Olive Way
Seattle, WA 98101
(206) 623-1255

IN THE
Supreme Court of the United States

October Term, 1983

SUSAN LEE CULTEE, et al.
Petitioners,

v.

UNITED STATES OF AMERICA, et al.
Respondents.

**ON PETITION FOR
WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

REPLY BRIEF OF PETITIONING CHILDREN

This memorandum is impelled by a critical misstatement in the Government's brief.

The Solicitor General argues at page 6 of the brief that when Congress amended 25 U.S.C. 464 in 1980, it "recognized and approved" the Interior Department's interpretation that Section 464 excludes from BIA probate proceedings the general application of state probate laws, including those which would protect pretermitted children.

However, the House Report cited by the Solicitor¹ actually shows that Congress interpreted Section 464 as incorporating state law generally:

1. H.R. Rep. No. 1285, 96th Cong., 2d Sess. 2 (1980).

The devise and descent of interests in the trust property of deceased Indians is controlled by Federal law. The law provides that the Secretary of the Interior, generally applying the laws of the State in which the property is situated, will probate the estates of deceased Indians holding interests in trust property.²³

This directly contradicts the Solicitor General. Congress believed that Section 464 (Section 4 of the Indian Reorganization Act of 1934) filled the gaps in federal Indian probate law by incorporating consistent provisions of state law. It made the treatment of Indian wills congruent with the treatment of Indian intestate estates, which the Secretary of the Interior has distributed in accordance with the provisions of state intestacy statutes for nearly 100 years, pursuant to 25 U.S.C. 348 (Section 5 of the General Allotment Act of 1887).

RESPECTFULLY SUBMITTED this 17th day of April, 1984.

ZIONTZ, PIRTLE, MORISSET,
ERNSTOFF & CHESTNUT

By: /s/ Samuel J. Stiltner
Samuel J. Stiltner
*Of Attorneys for Petitioning
Children.*

Mason D. Morisset
Of Counsel

2. *Id.* at 3.

3. The Court of Appeals merely cited the House Report for the requirement that devisees be "heirs" as defined by state law. See Pet. App. A-11-A-12. This is but one particular application of the general incorporation of state law.